Raising claims in insolvency proceedings

Quality insolvency law of economic entities is in addition to civil and commercial law one of the pillars of a developed market economy. In case the insolvency law allows relatively simple application of claims and is a guarantee of the recovery of substantial amount, it can positively influence business environment as well as enhance legal certainty of legal relations.

In this area, Czech Republic with its previous legislation represented by Act No. 328/1991 Coll., on Bankruptcy and Settlement despite its numerous amendments, lagged behind its neighboring countries like Slovak Republic e.g., where this rule has been replaced by Act No. 7 / 2005 Coll., on Bankruptcy and Restructuring already since July 1st 2005.

Important change came with the Act No. 182/2006 Coll., on Insolvency and Methods of its Solution, which is a complex recodification effective from January 1st 2008. Besides the overall modernization its primary aim was to relieve the shortcomings of prior legal form that have been visible mainly in very weak position of creditors in the proceedings, its slowness and low level of satisfaction of creditors' claims. The effectiveness of the new rules and their targets have been largely achieved after almost two years.

The influence of creditors asserting their claims on control overrun as well as ways of solution of debtor's insolvency in some cases even before its commencement increased particularly. If the debtor decides to solve his or her situation with his/her creditors on time, he/she can reach beneficial solutions for both sides, e.g. in the form of pre-negotiated reorganization.

Creditor rights, however, in most cases are not applied individually but through the creditor’s bodies that together with insolvency administrator affect the insolvency proceedings particularly. Insolvency court thus keeps the supervisory powers over the whole process. The insolvency administrator might be even chosen by creditors during the first meeting and the court is obliged to comply with this change as far as other legal requirements are fulfilled.

Methods of claim filing have been changed as well. Visible is some kind of formalization when submitting the insolvency draft whose aim is to achieve faster proceeding. Insolvency court is entitled to reject the defective or incomplete proposals for initiating a procedure without examinating the core of the matter. Important are the protection elements against the so-called chicaning proposals that previously could have been misused by submitters to remove or damage his/her competitor on the market.

Insolvency law changed the method of satisfying the secured creditors. They are satisfied with the property that serves to ensure the full amount. This change is positive due to two reasons - first, it eliminates the situation when the creditors demanded higher guarantee than the amount of claim itself, and second, the careful creditors are not harmed anymore in favor of creditors who have not been that careful.

The new legislation includes also methods of dealing with insolvency reorganization that can result in even a higher satisfaction of creditors when compared with simple clearing off the debtor's assets in bankruptcy. On the other hand, it is not possible to expect that reorganization would significantly reduce the number of insolvencies solved by bankruptcy because of relatively strict conditions for their permission. It was confirmed during first two years of the new act when the reorganization was allowed very rare.

It is not possible to say that the insolvency law was completely flawless insolvency legislation, but its strengths compared to the previous legal standard are more than evident and I think that its qualities can be seen in praxis.